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WAL-MART ASSOCIATES, INC.

8 **UNITED STATE DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

10

11 DOREENA GONZALES, an individual;

Case No. _____

12 Plaintiff,

**DEFENDANT WAL-MART ASSOCIATES,
INC.’S NOTICE OF REMOVAL OF CIVIL
ACTION TO UNITED STATES DISTRICT
COURT UNDER 28 U.S.C. § 1332
(DIVERSITY JURISDICTION)**

13 vs.

14 WAL-MART ASSOCIATES, INC., a Delaware
corporation; and DOES 1 through 50, inclusive;

Action Filed: November 10, 2021
Removal Filed: December 30, 2021
Trial Date: None set.

15 Defendants.

16

17 **TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA AND TO PLAINTIFF DOREENA GONZALES AND HER ATTORNEYS
OF RECORD:**

18 **PLEASE TAKE NOTICE** that Defendant WAL-MART ASSOCIATES, INC.
19 (“Defendant”), by and through the undersigned counsel, hereby removes the below-entitled action
20 from the Superior Court of the State of California for the County of Santa Clara to the United States
21 District Court for the Northern District of California pursuant to United States Code, Title 28,
22 Sections 1332, 1441(b) and 1446. Defendant removes this action on the grounds that: (a) there is
23 complete diversity of citizenship between Plaintiff DOREENA GONZALES (“Plaintiff”), a citizen
24 of the State of California, and Defendant, citizen of the States of Arkansas and Delaware; (b) the
25 amount in controversy exceeds the jurisdictional minimum of \$75,000 set forth in Section 1332(a);
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1 and (c) the foregoing facts were true at the time the Complaint in this matter was filed and remain
 2 true as of the date of the filing of this notice of removal, as is more fully set forth below.

3 **I. THE STATE COURT ACTION**

4 1. On or about November 10, 2021, Plaintiff filed an action entitled “*Doreena Gonzales*
 5 *v Wal-Mart Associates, Inc., et al.*” in Santa Clara County Superior Court, Case Number
 6 21CV391066 (the “Complaint”). A true and correct copy of the Complaint is attached hereto as
 7 **Exhibit A.**

8 2. On December 1, 2021, Plaintiff served Defendant with the Summons, Civil Case
 9 Cover Sheet, and Complaint. A true and correct copy of the Summons and Civil Case Cover Sheet
 10 are attached hereto as **Exhibit B.**

11 3. On December 29, 2021, Defendant filed and served its Answer to Plaintiff’s
 12 Complaint. A true and correct copy of Defendant’s Answer is attached hereto as **Exhibit C.**

13 **II. REMOVAL IS TIMELY**

14 4. A defendant in a civil action has thirty days from the date it is validly served with a
 15 summons and complaint to remove the action to federal court. 28 U.S.C. § 1446(b) (“[A] notice of
 16 removal may be filed within thirty days after receipt by the defendant, through service or otherwise,
 17 of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained
 18 that the case is one which is or has become removable”); *Murphy Bros. v. Michetti Pipe Stringing,*
 19 *Inc.*, 526 U.S. 344, 354 (1999) (holding that a defendant’s time to remove is triggered by formal
 20 service of the summons and complaint).

21 5. Here, removal is timely because it took place on December 30, 2021, within thirty
 22 days of Defendant’s December 1, 2021 service date.

23 **III. COMPLETE DIVERSITY EXISTS BETWEEN THE PARTIES**

24 6. This timely Notice is based on complete diversity of the parties. Plaintiff is a citizen
 25 of the State of California and Defendant is a citizen of the States of Delaware and Arkansas.

26 7. **Plaintiff is a citizen of California:** For diversity purposes, a person is a “citizen” of
 27 the state in which he or she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090
 28

1 (9th Cir. 1983). A person's domicile is the place he or she resides with the intention to remain or to
 2 which he or she intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

3 8. As set forth in the Complaint, Plaintiff is a resident of the County of Santa Clara, State
 4 of California. **Exhibit A**, Complaint, ¶ 1. As such, Plaintiff is domiciled in and for purposes of
 5 diversity jurisdiction is a citizen of the State of California.

6 9. **Defendant Is Not a Citizen of California:** Pursuant to United States Code, Title 28,
 7 Section 1332(c), "a corporation shall be deemed to be a citizen of any State by which it has been
 8 incorporated and of the State where it has its principal place of business." The Supreme Court has
 9 established the proper test for determining a corporation's principal place of business for purposes
 10 of diversity jurisdiction. *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). The Court held that the
 11 "'principal place of business' [as contained in Section 1332(c)] is best read as referring to the place
 12 where a corporation's officers direct, control, and coordinate the corporation's activities." *Id.* at
 13 1184. The Court further clarified that the principal place of business was the place where the
 14 corporation "maintains its headquarters - provided that the headquarters is the actual center of
 15 direction, control and coordination." *Id.*

16 10. Defendant is now, and was at the time of the filing of this action, a citizen of a State
 17 other than California within the meaning of United States Code, Title 28, Section 1332(c)(1).
 18 Specifically, Defendant, at the time this action was commenced, was (and still is) a corporation
 19 incorporated under the laws of the State of Delaware, with its principal place of business in the State
 20 of Arkansas. *See Cesena v. Wal-Mart Assocs., Inc.*, No. CV 16-2388-R, 2016 WL 3353931, at *2
 21 (C.D. Cal. June 8, 2016) ("Defendant Walmart, which is incorporated in Delaware and has its
 22 principal place of business in Arkansas"); *Elliot v. Wal-Mart Stores, Inc.*, No. 1:09-CV-1420-OWW-
 23 GSA, 2009 WL 4253973, at *1 (E.D. Cal. Nov. 24, 2009), *report and recommendation adopted*, No.
 24 1:09CV1420 OWW GSA, 2009 WL 10695076 (E.D. Cal. Dec. 23, 2009) ("Defendant [Wal-Mart]
 25 is a corporation incorporated under the laws of the State of Delaware and has its principal place of
 26 business in Bentonville, Arkansas.")

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1 11. Thus, Defendant was not and is not a citizen of the State of California but, rather, is
 2 a citizen of the State of Delaware and/or the State of Arkansas for the purpose of determining
 3 jurisdiction.

4 12. **“Doe” Defendants’ Citizenship:** “For purposes of removal . . . the citizenship of
 5 defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1441(a). Inclusion of
 6 “Doe” defendants in a state court complaint has no effect on removability. *Newcombe v. Adolf Coors*
 7 *Co.,* 157 F.3d 686, 690 (9th Cir. 1998) (in determining whether diversity of citizenship exists, only
 8 the named defendants are considered); *Salveson v. W. States Bankcard Ass’n,* 731 F.2d 1423, 1429
 9 (9th Cir. 1984) (holding that the rule in the Ninth Circuit is that non-served defendants are not
 10 required to join in a removal petition). Therefore, Plaintiff’s inclusion of “Does 1 through 50” in the
 11 Complaint cannot defeat diversity jurisdiction.

12 **IV. THE JURISDICTIONAL MINIMUM IS EASILY MET**

13 13. This Court’s jurisdictional minimum of an amount in controversy over \$75,000 is
 14 and was satisfied at the time this action was filed, as explained below.

15 14. As a threshold matter, the Court may look to the Complaint and the removal papers
 16 for underlying facts establishing the jurisdictional limit for removal. *Gaus v. Miles, Inc.,* 980 F.2d
 17 564, 566 (9th Cir. 1992). In determining whether the jurisdictional minimum is met, the Court
 18 considers all recoverable damages, including compensatory damages, emotional distress damages,
 19 punitive damages, statutory penalties, and attorney’s fees. *Hunt v. Washington State Apple Advert.*
 20 *Comm’n,* 432 U.S. 333, 347–48 (1977); *Galt G/S v. JSS Scandinavia,* 142 F.3d 1150, 1155–56 (9th
 21 Cir. 1998). Removal is proper if from the allegations of the Complaint and the Notice of Removal,
 22 it is more likely than not that the value of Plaintiffs’ claims exceeds \$75,000. *Sanchez v. Monumental*
 23 *Life Ins. Co.,* 102 F.3d 398, 404 (9th Cir. 1996); *Luckett v. Delta Airlines, Inc.,* 171 F.3d 295, 298
 24 (5th Cir. 1999).

25 15. “[A]s specified in § 1446(a), a defendant’s notice of removal need include only a
 26 *plausible* allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*
 27 *Cherokee Basin Operating Co., LLC v. Owens,* 574 U.S. 81 (2014) (emphasis added). To meet this
 28 relatively low burden regarding the amount in controversy, a defendant may rely on plaintiff’s

1 allegations, which are assumed to be true, and provide supplementary facts or numbers upon which
 2 the amount in controversy can reasonably be calculated. *See Korn v. Polo Ralph Lauren Corp.*, 536
 3 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008); *Rippee v. Bos. Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D.
 4 Cal. 2005) (allowing the use of “Defendant’s own numbers” for “purposes of analyzing the amount
 5 in controversy”).

6 16. **Compensatory Damages:** Plaintiff seeks lost income in the form of past and future
 7 earnings and benefits. **Exhibit A**, Complaint, ¶¶ 23, 34, 43, 52, 58, 70 and Prayer for Judgment, pg.
 8 15, ¶¶ 2-3. Plaintiff alleges Defendant terminated her employment on November 27, 2019. **Exhibit**
 9 **A**, Complaint, ¶ 15. Assuming Plaintiff has not secured new employment, she puts at issue at least
 10 twenty-five (25) months’ worth of lost income to date, and assuming this case goes to trial in
 11 approximately twenty-seven (27) months, her back pay claim will seek at least four years of past
 12 wages and benefits. *See U.S. District Court–Judicial Caseload Profile, California Northern*, June 30,
 13 2020, available at https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0630.2021.pdf
 14 (indicating that the average time to trial in the Northern District is 26.9 months). At the time of her
 15 termination, Plaintiff was earning \$16.47 per hour and working an average of 37 hours per week.
 16 Thus, assuming that Plaintiff has not found new employment at the time of trial in this case, her
 17 claim for lost income alone will be approximately \$126,753 (\$16.47 per hour x 37 hours per week x
 18 208 weeks).

19 17. **Emotional Distress:** Plaintiff also seeks compensation for general damages
 20 including but not limited to, past and future “emotional distress, humiliation, mental anguish and
 21 embarrassment, as well as the manifestation of physical symptoms.” **Exhibit A**, Complaint, ¶¶ 24,
 22 35, 44, 53, 59, 71, and Prayer for Judgment, pg. 15, ¶ 1. Plaintiff’s claim for these damages adds
 23 thousands of dollars to the amount in controversy. A review of jury verdicts in California
 24 demonstrates that emotional distress awards in discrimination cases commonly exceed \$75,000. *See,*
 25 *e.g., Cosby v. Autozone, Inc.*, 2010 WL 1012678 (E.D. Cal. Feb. 12, 2010) (award of \$1,326,000 in
 26 mental suffering to employee terminated based on disability); *Kolas v. Access Business Group LLC*,
 27 2008 WL 496470 (Los Angeles County Superior Court) (award of \$200,000 in non-economic
 28 damages to employee terminated in part based on age); *Tiegs v. Bank of America*, 2004 WL 903847

1 (Orange County Superior Court) (jury award of more than \$3,000,000 to 50 year old bank employee
 2 terminated because of age); *DFEH v. County of Riverside*, 2003 WL 24304125 (Riverside County
 3 Superior Court) (jury awarded \$300,000 emotional distress damages for failure to accommodate
 4 claim); *Pirouzkar v. Regents of the University of California*, 2002 WL 31414996 (Los Angeles
 5 County Superior Court) (award of \$2,087,500 pain and suffering damages for doctor alleging
 6 discrimination and wrongful discharge). Therefore, Plaintiff's claimed emotional distress damages
 7 alone are likely to satisfy the amount in controversy requirement for removal.

8 18. **Attorney's Fees:** Plaintiff also seeks attorneys' fees. **Exhibit A**, Complaint, ¶¶ 25,
 9 36, 45, 61, and Prayer for Judgment, pg. 15, ¶ 8. Requests for attorneys' fees must be taken into
 10 account in ascertaining the amount in controversy. *See Galt G/S*, 142 F.3d at 1156 (claims for
 11 statutory attorneys' fees to be included in the amount in controversy, regardless of whether award is
 12 discretionary or mandatory). Recently, the United States District Court for the Northern District of
 13 California awarded attorneys' fees to a prevailing plaintiff asserting Fair Employment and Housing
 14 Act claims of \$550 per hour (for an attorney with 20 years' experience) and \$350 (for an attorney
 15 with 7 years' experience). *See Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1144 (N.D.
 16 Cal. 2016) (awarding over \$42,000 in attorneys' fees for a default judgment); *see also Garcia v. ACE*
 17 *Cash Express, Inc.*, No. SACV 14-0285-DOC, 2014 WL 2468344, at *3–5 (C.D. Cal. May 30, 2014)
 18 (holding that for purposes of calculating the amount in controversy at removal, \$300 per hour with
 19 100 hours expended is a conservative estimate of attorneys' fees sought, and noting that employment
 20 claims require "substantial effort" from counsel resulting in fees that often exceed damages).
 21 Defendant anticipates that the parties will propound written discovery and that depositions will be
 22 taken in this case, and that ultimately Defendant will file a Motion for Summary Judgment. Preparing
 23 for and responding to these actions alone is likely to trigger significant attorneys' fees. Therefore, if
 24 Plaintiff is successful on her claims, she could be entitled to an award of attorneys' fees that itself
 25 would "more likely than not" exceed \$75,000, as is typical in employment discrimination cases.

26 19. Accordingly, Plaintiff's claims for lost wages, emotional distress, and attorneys' fees,
 27 establish on the face of the Complaint that the amount in controversy indisputably exceeds \$75,000.

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V. VENUE

20. Venue lies in this Court because Plaintiff's action is pending in this district and division. *See* 28 U.S.C. § 1441(a). Under United States Code, Title 28, Section 1441(a), this case may properly be removed to the Northern District of California because Plaintiff filed this case in the Superior Court of California, County of Santa Clara. Additionally, Defendant is informed and believe that the events allegedly giving rise to this action occurred within this judicial district.

VI. SATISFACTION OF REQUIREMENTS OF 28 U.S.C. § 1446

21. In accordance with United States Code, Title 28, Section 1446(a), **Exhibits A-C** constitute a copy of all processes, pleadings, and orders either served upon or by Defendant. As required by United States Code, Title 28, Section 1446(b), the Notice of Removal was filed within 30 days after Defendant was served with Plaintiff's Complaint. As required by United States Code, Title 28, Section 1446(d), Defendant will provide notice of this removal to Plaintiff through her attorneys of record and a copy of this Notice of Removal will be filed with the Superior Court of the State of California for the County of Santa Clara.

VII. CONCLUSION

22. Because this civil action is between citizens of different States and the matter in controversy exceeds \$75,000, exclusive of interest and costs, Defendant respectfully requests that this Court exercise its removal jurisdiction over this action.

23. In the event this Court has a question regarding the propriety of this Notice, Defendant requests the Court set an evidentiary hearing so that it may have an opportunity to more fully brief the Court on the basis for this removal.

DATED: December 30, 2021

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART P.C.

By: /s/ Jill L. Schubert
James T. Conley
Jill L. Schubert

Attorneys for Defendant
WAL-MART ASSOCIATES, INC.

EXHIBIT A

E-FILED
 11/10/2021 2:30 PM
 Clerk of Court
 Superior Court of CA,
 County of Santa Clara
 21CV391066
 Reviewed By: R. Cachux

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10 Attorneys for Plaintiff
 11 **DOREENA GONZALES**

12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 13 **FOR THE COUNTY OF SANTA CLARA - DOWNTOWN**

14 DOREENA GONZALES, an individual;

15 vs.
 16 Plaintiff,

17 WAL-MART ASSOCIATES, INC., a
 18 Delaware corporation; and DOES 1
 19 through 50, inclusive;

20 Defendants.

21 Case No.: **21CV391066**

22 **COMPLAINT FOR:**

1. SEXUAL HARASSMENT IN VIOLATION OF GOVERNMENT CODE § 12940 *ET SEQ.* [FEHA];
2. FAILURE TO PREVENT HARASSMENT IN VIOLATION OF GOVERNMENT CODE § 12940 *ET SEQ.* [FEHA];
3. RETALIATION IN VIOLATION OF FEHA;
4. VIOLATION OF LABOR CODE § 1102.5;
5. VIOLATION OF LABOR CODE § 6310;
6. REST PERIOD VIOLATIONS;
7. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.

23 Plaintiff, DOREENA GONZALES, hereby brings her complaint against the above-named Defendants and states and alleges as follows:

24 **PRELIMINARY ALLEGATIONS**

- 25 1. At all times material herein, Plaintiff, DOREENA GONZALES (hereinafter referred to as "Plaintiff") was and is a resident of the State of California, County of Santa Clara.
- 26 2. Plaintiff is informed, believes, and based thereon alleges that, at all times material herein, Defendant WAL-MART ASSOCIATES, INC. (hereinafter "WAL-MART") was a Delaware corporation doing business in the State of California, County of Santa Clara.

1 3. DOES 1 through 50, and each of them, were and are the shareholders, and/or directors,
2 and/or officers, and/or agents, and/or alter egos of Defendants, and in doing the things herein
3 described, were acting within the scope of their authority as such shareholders, and/or directors,
4 and/or officers, and/or agents, and/or alter egos of Defendants.

5 4. The true names and capacities, whether individual, corporate, associate or otherwise of
6 DOES 1 through 50 are unknown to Plaintiff who therefore sues these Defendants under said
7 fictitious names. Plaintiff is informed and believes that each of the Defendants named as a DOE
8 Defendant is legally responsible in some manner for the events referred to in this complaint,
9 either negligently, willfully, wantonly, recklessly, tortiously, strictly liable, statutorily liable or
10 otherwise, for the injuries and damages described below to this Plaintiff. Plaintiff will in the
11 future seek leave of this court to show the true names and capacities of these DOE Defendants
12 when it has been ascertained.

13 5. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously
14 named Defendants is responsible in some manner for, and proximately caused, the harm and
15 damages alleged herein below.

16 6. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
17 named herein acted as the employee, agent, spouse, partner, alter-ego, joint employer, and/or
18 joint venturer of each of the other Defendants named herein and, in doing the acts and in carrying
19 out the wrongful conduct alleged herein, each of said Defendants acted within the scope of said
20 relationship and with the permission, consent and ratification of each of the other Defendants
21 named herein.

22 7. Finally, Defendants are liable for the acts of their employees under the doctrine of
23 respondeat superior and via conspiracy liability. Each of the acts described above and further
24 described below under each Cause of Action was perpetrated during the course and scope of
25 employment of the actors, was carried out with knowledge of Defendants, was condoned and
26 ratified, and/or was taken pursuant to an implied agreement by Defendants to deliberately take
27 said actions.

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8. Hereinafter in the Complaint, unless otherwise specified, reference to a Defendant or Defendants shall refer to all Defendants, and each of them.

9. The jurisdiction of this Court is proper for the relief sought herein, and the amount demanded by Plaintiff exceeds \$25,000.

FACTUAL ALLEGATIONS

10. In or about November 2017, Defendant hired Plaintiff as a Loss Prevention Door Host. Plaintiff's main job duty was to serve as a potential deterrent to criminal activity by maintaining a highly visible presence as security for Defendant's storefront. Throughout Plaintiff's tenure with Defendant, she became a valued and integral employee of Defendant's organization.

11. In or about August 2019, Defendant's other Loss Prevention Door Host, Elisa Nunez ("Nunez") began harassing Plaintiff. Specifically, Nunez constantly explained sexually explicit scenarios she did with her boyfriend to Plaintiff. Plaintiff told Nunez to please stop talking to her about sexually explicit scenarios, but Nunez continued. Plaintiff complained about the Nunez's inappropriate behavior to Defendant's Supervisors, Rosa ("Last Name Unknown") and Maria ("Last Name Unknown"). Despite her complaints, Defendant kept Nunez working with Plaintiff and failed to prevent the harassment.

12. In or about August 2019, Plaintiff complained to her Supervisors, Gladys ("Last Name Unknown") and Edgar ("Last Name Unknown"), about her work area smelling like natural gas. Plaintiff urged Gladys to call the fire department because the work area continued to smell like natural gas, but Gladys refused. About four hours after Plaintiff's initial request, Gladys finally obliged and called the fire department. The fire department evacuated the store, shut down the gas line, and told Defendant that if it had not called the fire department, the building could have blown up.

13. Following Plaintiff's complaints, she applied for the Office Loss Prevention position but kept being denied. Plaintiff inquired as to why she was being denied for the position, but she was never given an answer.

14. In November 2019, Plaintiff informed Defendant that it had accidentally given her \$700. After this information was brought to Defendant by Plaintiff, Defendant immediately demanded

1 the money back. Plaintiff informed Defendant that she could only give Defendant \$120 at the
 2 current moment but that she was going to nevertheless pay back the money within the next week.
 3 In response, Defendant told Plaintiff to keep the money because she was going to be terminated.

4 15. On November 27, 2019, Defendant terminated Plaintiff because they claimed she took
 5 money out of Defendant's register. Plaintiff did not take money out of the register as she was not
 6 even working the money service area. Defendant wrongfully terminated Plaintiff in retaliation
 7 for her protected complaints.

8 16. Throughout her tenure, Defendant also failed to provide Plaintiff with 10-minute rest
 9 breaks, approximately three times a week due to a lack of coverage.

10 17. Plaintiff further exhausted her administrative remedies by filing a complaint with the
 11 Department of Fair Housing and Employment ("DFEH") on November 9, 2021. The DFEH
 12 issued Plaintiff an immediate right-to-sue letter on November 9, 2021.

FIRST CAUSE OF ACTION

SEXUAL HARASSMENT IN VIOLATION OF GOVT. CODE §§ 12940 ET SEQ. (FEHA)

(Against WAL-MART and DOES 1 through 50)

16 18. Plaintiff hereby repeats and incorporates all preceding paragraphs as though fully set
 17 forth herein.

18 19. At all times herein mentioned, California Government Code § 12940 et seq., was in
 19 full force and effect and was binding on Defendants, as Defendants regularly employed five (5)
 20 or more persons. California Government Code § 12940(j) requires Defendants to refrain from
 21 sexually harassing its employees.

22 20. The sexually harassing conduct and harassing comments were severe and/or pervasive
 23 enough to create a work environment that a reasonable person would consider intimidating,
 24 hostile, or abusive.

25 21. Defendants failed to take immediate appropriate corrective action. Defendants failed
 26 to properly train its supervisors regarding how to handle harassment and complaints of
 27 harassment. Defendants failed to take reasonable action to prevent further harassment from
 28 occurring.

1 22. The above said acts of Defendants constitute harassment in violation of California
2 Government Code § 12940 et seq.

3 23. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered actual,
4 consequential and incidental financial losses, including without limitation, loss of salary and
5 benefits, and the intangible loss of employment related opportunities in her field and damage to
6 her professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims
7 such amounts as damages pursuant to California Civil Code § 3287 and/or § 3288 and/or any
8 other provision of law providing for prejudgment interest.

9 24. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and
10 continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well
11 as the manifestation of physical symptoms. Plaintiff is informed and believes, and thereon
12 alleges that she will continue to experience said physical and emotional suffering for a period in
13 the future not presently ascertainable, all in an amount subject to proof at the time of trial.

14 25. As a proximate result of the wrongful acts of Defendants, Plaintiff has been forced to
15 hire attorneys to prosecute her claims herein, and has incurred and is expected to continue to
16 incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys'
17 fees and costs under California Government Code § 12965(b).

18 26. Defendants had in place policies and procedures that specifically prohibited and
19 required Defendants' managers, officers, and agents to prevent harassment against and upon
20 employees of Defendants. Each Defendant aided, abetted, participated in, authorized, ratified,
21 and/or conspired to engage in the wrongful conduct alleged above. Plaintiff should, therefore, be
22 awarded exemplary and punitive damages against Defendants in an amount to be established that
23 is appropriate to punish Defendants and deter others from engaging in such conduct.

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SECOND CAUSE OF ACTION

FAILURE TO PREVENT HARASSMENT

IN VIOLATION OF GOVT. CODE §§ 12940 *ET SEQ.* (FEHA)

(Against WAL-MART and DOES 1 through 50)

27. Plaintiff hereby repeats and incorporates all preceding paragraphs as though fully set forth herein.

28. At all times herein mentioned, California Government Code § 12940 et seq. was in full force and effect and was binding on Defendants. These sections impose on an employer a duty to conduct a timely and good faith investigation of allegations of harassment, to take immediate and appropriate corrective action to end harassment and take all reasonable steps necessary to prevent harassment from occurring, among other things.

29. Defendants failed to conduct a reasonable and good faith investigation of Plaintiff's complaints, and failed to take reasonable action to prevent further harassment from occurring. As a result, the harassment of Plaintiff continued.

30. Defendants' aforementioned conduct caused Plaintiff to suffer severe emotional distress, including but not limited to anxiety, stress, and depression.

31. The above-described acts created an intimidating, oppressive, hostile, offensive and abusive work environment, which altered and impaired the conditions of Plaintiff's employment and Plaintiff's emotional well-being. Defendants' conduct was a concerted pattern of harassment of a repeated, routine and generalized nature.

32. Defendants violated Government Code § 12940 (j) and (k) by failing to adequately supervise, control, discipline, and/or otherwise penalize the conduct, acts, and failures to act as described herein.

33. Defendants failed to fulfill its statutory duty to timely take immediate and appropriate corrective action to end the harassment and also failed to take all reasonable steps necessary to prevent the harassment from occurring.

34. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and

1 benefits, and the intangible loss of employment related opportunities in her field and damage to
 2 her professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims
 3 such amounts as damages pursuant to California Civil Code § 3287 and/or § 3288 and/or any
 4 other provision of law providing for prejudgment interest.

5 35. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and
 6 continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well
 7 as the manifestation of physical symptoms. Plaintiff is informed and believes, and thereon
 8 alleges that she will continue to experience said physical and emotional suffering for a period in
 9 the future not presently ascertainable, all in an amount subject to proof at the time of trial.

10 36. As a proximate result of the wrongful acts of Defendants, Plaintiff has been forced to
 11 hire attorneys to prosecute her claims herein, and has incurred and is expected to continue to
 12 incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys'
 13 fees and costs under California Government Code § 12965(b).

14 37. Defendants had in place policies and procedures that specifically prohibited and
 15 required Defendants' managers, officers, and agents to prevent harassment against and upon
 16 employees of Defendants. Each Defendant aided, abetted, participated in, authorized, ratified,
 17 and/or conspired to engage in the wrongful conduct alleged above. Plaintiff should, therefore, be
 18 awarded exemplary and punitive damages against Defendants in an amount to be established that
 19 is appropriate to punish Defendants and deter others from engaging in such conduct.

20 38. Furthermore, Plaintiff is informed and believes and based thereon alleges that
 21 Defendants had a pattern and practice of harassing employees. Plaintiff should, therefore, be
 22 awarded exemplary and punitive damages against each Defendant in an amount to be established
 23 that is appropriate to punish Defendants and deter others from engaging in such conduct.

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THIRD CAUSE OF ACTION**RETALIATION****IN VIOLATION OF GOVT. CODE §§ 12940 ET SEQ. (FEHA)****(Against WAL-MART and DOES 1 through 50)**

5 39. Plaintiff hereby repeats and incorporates all preceding paragraphs as though fully set
6 forth herein.

7 40. California Government Code § 12940(h) makes it unlawful for any person to retaliate
8 against an employee who has engaged in protected activity under the FEHA, including
9 complaining about sexual harassment.

10 41. At all times herein mentioned, California Government Code § 12940, et seq., was in
11 full force and effect and was binding on Defendants, as Defendants regularly employed five (5)
12 or more persons.

13 42. Defendants' conduct, as alleged above, constituted unlawful retaliation in violation of
14 California Government Code § 12940(h).

15 43. As a proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff
16 has suffered actual, consequential and incidental financial losses, including without limitation,
17 loss of salary and benefits, and the intangible loss of employment related opportunities in her
18 field and damage to her professional reputation, all in an amount subject to proof at the time of
19 trial. Plaintiff claims such amounts as damages pursuant to Civil Code § 3287 and/or § 3288
20 and/or any other provision of law providing for prejudgment interest.

21 44. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
22 has suffered and continues to suffer emotional distress, humiliation, mental anguish and
23 embarrassment, as well as the manifestation of physical symptoms. Plaintiff is informed and
24 believes and thereupon alleges that she will continue to experience said physical and emotional
25 suffering for a period in the future not presently ascertainable, all in an amount subject to proof
26 at the time of trial.

27 45. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
28 has been forced to hire attorneys to prosecute her claims herein, and has incurred and is expected

to continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys' fees and costs under California Government Code § 12965(b).

3 46. Defendants had in place policies and procedures that specifically prohibited and
4 required Defendants' managers, officers, and agents to prevent retaliation against and upon
5 employees of Defendants. Defendants' managers, officers, and/or agents were aware of
6 Defendants' policies and procedures requiring Defendants' managers, officers, and agents to
7 prevent retaliation for complaints of sexual harassment against and upon employees of
8 Defendants. However, Defendants' managers, officers, and agents chose to consciously and
9 willfully ignore said policies and procedures and therefore, their outrageous conduct was
10 fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff
11 and the rights and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted,
12 participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged
13 above. Plaintiff should, therefore, be awarded exemplary and punitive damages against each
14 Defendant in an amount to be established that is appropriate to punish each Defendant and deter
15 others from engaging in such conduct.

FOURTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE § 1102.5

(Against WAL-MART and DOES 1 through 50)

19 47. Plaintiff hereby repeats and incorporates all preceding paragraphs as though fully set
20 forth herein.

48. At all times mentioned herein California Labor Code section 1102.5, *et seq.* were in full force and effect and were binding on Defendants and each of them.

23 49. California Labor Code § 1102.5(a) provides: "An employer, or any person acting on
24 behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy
25 preventing an employee from disclosing information to a government or law enforcement
26 agency, to a person with authority over the employee, or to another employee who has authority
27 to investigate, discover, or correct the violation or noncompliance, or from providing information
28 to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the

1 employee has reasonable cause to believe that the information discloses a violation of state or
 2 federal statute, or a violation of or noncompliance with a local, state, or federal rule or
 3 regulation, regardless of whether disclosing the information is part of the employee's job duties."

4 50. California Labor Code § 1102.5(b) provides: "An employer, or any person acting on
 5 behalf of the employer, shall not retaliate against an employee for disclosing information, or
 6 because the employer believes that the employee disclosed or may disclose information, to a
 7 government or law enforcement agency, to a person with authority over the employee or another
 8 employee who has the authority to investigate, discover, or correct the violation or
 9 noncompliance, or for providing information to, or testifying before, any public body conducting
 10 an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the
 11 information discloses a violation of state or federal statute, or a violation of or noncompliance
 12 with a local, state, or federal rule or regulation, regardless of whether disclosing the information
 13 is part of the employee's job duties."

14 51. The retaliatory termination was a proximate cause of Plaintiff's complaints regarding
 15 the unsafe working conditions as stated herein.

16 52. As a proximate result of the aforesaid acts of Defendant, Plaintiff lost, and will
 17 continue to lose, earnings and benefits and has suffered and/or will suffer other actual,
 18 consequential and incidental financial losses, in an amount to be proven at trial in excess of the
 19 jurisdictional minimum of this court. Plaintiff claims such amounts as damages together with
 20 prejudgment interest pursuant to California Civil Code § 3287 and/or § 3288 and/or any other
 21 provision of law providing for prejudgment interest.

22 53. As a proximate result of the aforesaid acts of Defendant, Plaintiff is mentally upset,
 23 distressed, embarrassed, humiliated, and aggravated. As a result of the acts of retaliation,
 24 Plaintiff has suffered harm to her reputation. Plaintiff claims general damages for such mental
 25 and physical distress and aggravation in a sum in excess of the jurisdictional minimum of this
 26 court.

27 54. Plaintiff is informed and believes and based thereon alleges that Defendants had in
 28 place policies and procedures that specifically forbid Defendants' managers, officers, and agents

1 from retaliating against employees who engaged in protected activity such as opposing or
 2 complaining about Defendants' unlawful activity. Defendants' managers, officers, and/or agents
 3 were aware of Defendants' policies and procedures prohibiting retaliating in this manner.
 4 However, Defendants' managers, officers, and/or agents chose to consciously and willfully
 5 ignore said policies and procedures and therefore, their outrageous conduct was fraudulent,
 6 malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff and the rights
 7 and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted, participated in,
 8 authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiff
 9 should, therefore, be awarded exemplary and punitive damages against each Defendant in an
 10 amount to be established that is appropriate to punish each Defendant and deter others from
 11 engaging in such conduct.

12 **FIFTH CAUSE OF ACTION**

13 **VIOLATION OF CALIFORNIA LABOR CODE § 6310**

14 **(Against WAL-MART and DOES 1 through 50)**

15 55. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as if
 16 fully set forth at this place.

17 56. At all times mentioned herein California Labor Code section 6310 was in full
 18 force and effect and was binding on Defendants and each of them.

19 57. California Labor Code section 6310(b) states in pertinent part, "Any employee who
 20 is discharged, threatened with discharge, demoted, suspended, or in any other manner
 21 discriminated against in the terms and conditions of employment by his or her employer because
 22 the employee has made a bona fide oral or written complaint to . . . his or her employer, or his or
 23 her representative, of unsafe working conditions, or work practices, in his or her employment or
 24 place of employment . . . shall be entitled to reinstatement and reimbursement for lost wages and
 25 work benefits caused by the acts of the employer."

26 58. As a proximate result of the aforesaid acts of Defendants and each of them,
 27 Plaintiff has lost, and will continue to lose, earnings and fringe benefits and has suffered and/or
 28 will suffer other actual, consequential and incidental financial losses, in an amount to be proven

1 at trial in excess of the jurisdictional minimum of this court. Plaintiff claims such amounts as
2 damages together with prejudgment interest pursuant to California Civil Code § 3287 and/or §
3 3288 and/or any other provision of law providing for prejudgment interest.

4 59. As a proximate result of the aforesaid acts of Defendants and each of them, Plaintiff
5 has become mentally upset, distressed, embarrassed, humiliated, and aggravated. As a result of
6 the acts of retaliation, Plaintiff suffered harm to her reputation. Plaintiff claims general damages
7 for such mental and physical distress and aggravation in a sum in excess of the jurisdictional
8 minimum of this court.

9 60. Defendants had in place policies and procedures that specifically prohibited and
10 required Defendants' managers, officers, and agents to prevent retaliation against and upon
11 employees of Defendants. All Defendants' managers, officers, and/or agents of Defendants were
12 aware of Defendants' policies and procedures requiring Defendants' managers, officers, and
13 agents to prevent, and investigate retaliation against and upon employees of Defendants.
14 Furthermore, Defendants' managers maintained broad discretionary powers regarding staffing,
15 managing, hiring, firing, contracting, supervising, assessing and establishing of corporate policy
16 and practice in the defendant's facilities. However, Defendants' managers consciously and
17 willfully ignored said policies and procedures and therefore, their outrageous conduct was
18 fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff
19 and the rights and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted,
20 participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged
21 above. Plaintiff should, therefore, be awarded exemplary and punitive damages against each
22 Defendant in an amount to be established that is appropriate to punish each Defendant and deter
23 others from engaging in such conduct.

24 61. As a proximate result of the wrongful acts of Defendants, and each of them,
25 Plaintiff has been forced to hire attorneys to prosecute her claims herein, and has incurred and is
26 expected to continue to incur attorneys' fees and costs in connection therewith. Plaintiff is
27 entitled to recover attorneys' fees and costs under the California Labor Code.

28

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIODS**

3 **(Against WAL-MART and DOES 1 through 50)**

4 62. Plaintiff hereby repeats and incorporates all preceding paragraphs as though fully set
 5 forth herein.

6 63. California Labor Code § 226.7 states that “no employer shall require any employee to
 7 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
 8 Commission” and additionally, that “[i]f an employer fails to provide an employee a meal period
 9 or rest period in accordance with an applicable order of the Industrial Welfare Commission, the
 10 employer shall pay the employee one additional hour of pay at the employee’s regular rate of
 11 compensation for each work day that the meal or rest period is not provided.”

12 64. During the relevant time period, Employer Defendants willfully required Plaintiff to
 13 work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per
 14 each four (4) hour period worked. Employer Defendants also had no policy and/or practice to
 15 pay a premium when rest periods were missed, and thus failed to pay Plaintiff the full rest period
 16 premiums due to him.

17 65. As such, Plaintiff did not receive ten (10) minute rest periods for every four (4) hours
 18 of work or major fraction thereof, as mandated by the California Labor Code and the IWC Wage
 19 Order No. 5-2001. Furthermore, Plaintiff did not receive compensation at the rate of one hour’s
 20 pay for each day she was deprived of her rest period(s).

21 66. Plaintiff is entitled to one (1) additional hour of pay per day that Defendants denied
 22 her an uninterrupted rest period.

23 **SEVENTH CAUSE OF ACTION**

24 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

25 **(Against WAL-MART and DOES 1 through 50)**

26 67. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth at this
 27 place.

1 68. "[W]hen an employer's discharge of an employee violates fundamental principles of
 2 public policy, the discharged employee may maintain a tort action and recover damages
 3 traditionally available in such actions." *Tamony v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167,
 4 170 "[T]he cases in which violations of public policy are found generally fall into four
 5 categories: (1) refusing to violate a statute; (2) performing a statutory obligation (3) exercising a
 6 statutory right or privilege; and (4) reporting an alleged violation of a statute of public
 7 importance." *Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1090-1091. Similarly, "an
 8 employer's authority over its employee does not include the right to demand that the employee
 9 commit a criminal act to further its interests, and an employer may not coerce compliance with
 10 such unlawful directions by discharging an employee who refuses to follow such an order . . ."
 11 *Tamony, supra*, 27 Cal.3d at p. 178.

12 69. The public policy of the State of California is designed to protect all employees and to
 13 promote the welfare and well-being of the community at large. Accordingly, the actions of
 14 Defendants, and each of them, in terminating Plaintiff on the grounds alleged and described
 15 herein were wrongful and in contravention of the express public policy of the State of California.

16 70. As a proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff
 17 has suffered actual, consequential and incidental financial losses, including without limitation,
 18 loss of salary and benefits, and the intangible loss of employment related opportunities in her
 19 field and damage to her professional reputation, all in an amount subject to proof at the time of
 20 trial. Plaintiff claims such amounts as damages pursuant to Civil Code § 3287 and/or § 3288
 21 and/or any other provision of law providing for prejudgment interest.

22 71. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
 23 has suffered and continues to suffer emotional distress, humiliation, mental anguish and
 24 embarrassment, as well as the manifestation of physical symptoms. Plaintiff is informed and
 25 believes and thereupon alleges that she will continue to experience said physical and emotional
 26 suffering for a period in the future not presently ascertainable, all in an amount subject to proof
 27 at the time of trial.

28

1 72. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
2 has been forced to hire attorneys to prosecute her claims herein, and has incurred and is expected
3 to continue to incur attorneys' fees and costs in connection therewith.

4 **WHEREFORE, Plaintiff prays for judgment as follows:**

- 5 1. For general damages, according to proof;
6 2. For special damages, according to proof;
7 3. For loss of earnings, according to proof;
8 4. For statutory penalties for wage and hour violations, according to proof;
9 5. For civil penalties for the above Labor Code sections;
10 6. For declaratory relief, according to proof;
11 7. For injunctive relief, according to proof;
12 8. For attorneys' fees, according to proof;
13 9. For prejudgment interest, according to proof;
14 10. For punitive and exemplary damages, according to proof;
15 11. For costs of suit incurred herein;
16 12. For interest accrued to date;
17 13. For such other relief that the Court may deem just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a jury trial for all causes of action set forth herein.

20 DATED: November 10, 2021 JML LAW, A Professional Law Corporation

23 By: Shahla Jalil-Valles

24 JOSEPH M. LOVRETOVICH

25 ERIC M. GRUZEN

26 SHAHLA JALIL-VALLES

27 Attorneys for Plaintiff

EXHIBIT B

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

WAL-MART ASSOCIATES, INC., a Delaware corporation; and DOES 1 through 50, inclusive;

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DOREENA GONZALES, an individual;

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

E-FILED
11/10/2021 2:30 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV391066
Reviewed By: R. Cachux
Envelope: 7644082

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.
AVISO! *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SANTA CLARA COUNTY SUPERIOR COURT
191 North First Street San Jose, CA 95113

CASE NUMBER:
(Número del Caso):

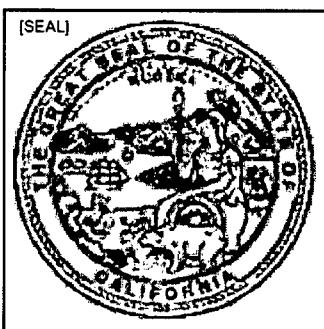
21CV391066

DATE: 11/10/2021 2:30 PM Clerk of Court Clerk, by _____ R. Cachux , Deputy (Adjunto)
(Fecha) _____

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): Wal-Mart Associates, Inc., a Delaware corporation
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Joseph M. Lovretovich; Eric M. Gruzen; Shahla Jalil-Valles (73403; 222448; 327827) JML LAW, APLC 5855 Topanga Canyon Boulevard, Suite 300 Woodland Hills, CA 91367 TELEPHONE NO.: (818) 610-8800 FAX NO.: (818) 610-3030 ATTORNEY FOR (Name): Plaintiff, DOREENA GONZALES		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: SANTA CLARA - DOWNTOWN		Electronically Filed by Superior Court of CA, County of Santa Clara, on 11/10/2021 2:30 PM Reviewed By: R. Cachux Case #21CV391066 Envelope: 7644082
CASE NAME: GONZALES v. WAL-MART ASSOCIATES, INC., ET AL.		CASE NUMBER: 21CV391066
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
JUDGE: DEPT:		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Auto (22)	<input type="checkbox"/> Breach of contract/warranty (06)	<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Rule 3.740 collections (09)	<input type="checkbox"/> Construction defect (10)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	<input type="checkbox"/> Other collections (09)	<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Asbestos (04)	<input type="checkbox"/> Insurance coverage (18)	<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Product liability (24)	<input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Medical malpractice (45)	Real Property	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Eminent domain/Inverse condemnation (14)	Enforcement of Judgment
Non-PI/PD/WD (Other) Tort	<input type="checkbox"/> Wrongful eviction (33)	<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Business tort/unfair business practice (07)	<input type="checkbox"/> Other real property (26)	Miscellaneous Civil Complaint
<input type="checkbox"/> Civil rights (08)	Unlawful Detainer	<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Defamation (13)	<input type="checkbox"/> Commercial (31)	<input type="checkbox"/> Other complaint (not specified above) (42)
<input type="checkbox"/> Fraud (16)	<input type="checkbox"/> Residential (32)	Miscellaneous Civil Petition
<input type="checkbox"/> Intellectual property (19)	<input type="checkbox"/> Drugs (38)	<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Professional negligence (25)	Judicial Review	<input type="checkbox"/> Other petition (not specified above) (43)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)	<input type="checkbox"/> Asset forfeiture (05)	
Employment	<input type="checkbox"/> Petition re: arbitration award (11)	
<input checked="" type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Writ of mandate (02)	
<input type="checkbox"/> Other employment (15)	<input type="checkbox"/> Other judicial review (39)	

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 7

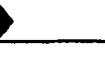
5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 11/10/2021

Eric M. Gruzen; Shahla Jalil-Valles

(TYPE OR PRINT NAME)


Shahla Jalil-Valles
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

Auto Tort

- Auto (22)—Personal Injury/Property
Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

CASE TYPES AND EXAMPLES

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract (*not unlawful detainer or wrongful eviction*)
 - Contract/Warranty Breach—Seller Plaintiff
 - Negligent Breach of Contract/Warranty
 - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

EXHIBIT C

1 JAMES T. CONLEY, SBN 224174
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7 Attorneys for Defendant
WAL-MART ASSOCIATES, INC.

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 12/29/2021 5:33 PM
Reviewed By: V. Castaneda
Case #21CV391066
Envelope: 7954796**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SANTA CLARA - DOWNTOWN**

10

11 DOREENA GONZALES, an individual;
12 Plaintiff,
13 vs.
14 WAL-MART ASSOCIATES, INC., a Delaware
corporation; and DOES 1 through 50, inclusive;
15 Defendants.
16

Case No. 21CV391066

**DEFENDANT WAL-MART ASSOCIATES,
INC.'S ANSWER TO PLAINTIFF
DOREENA GONZALES' COMPLAINT**

Action Filed: November 10, 2021
Trial Date: None set.

17 Defendant WAL-MART ASSOCIATES, INC. ("Defendant") hereby answers the Original
18 Complaint ("Complaint") filed by Plaintiff DOREENA GONZALES ("Plaintiff"):

19 **GENERAL AND SPECIFIC DENIALS**

20 Pursuant to the provisions of California Code of Civil Procedure section 431.30(d),
21 Defendant denies, generally and specifically, each and every allegation contained in the Complaint,
22 and further denies that Plaintiff has been damaged in the amount or amounts alleged therein, or in
23 any other amount, or at all, by reason of any act or omission on the part of Defendant, or by any act
24 or omission by any agent or employee of Defendant. Defendant further denies, generally and
25 specifically, that Plaintiff is entitled to any relief whatsoever.

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28 ///

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 **(Failure to State a Cause of Action)**

4 The Complaint, and each and every cause of action alleged therein fails to state facts
5 sufficient to constitute a cause of action for which relief may be granted.

6 **SECOND AFFIRMATIVE DEFENSE**

7 **(Adequate Remedy at Law)**

8 Plaintiff is barred from any injunctive relief sought because Plaintiff has adequate remedies
9 at law.

10 **THIRD AFFIRMATIVE DEFENSE**

11 **(Appropriate Remedial Action Taken by Employer)**

12 The Complaint, and each and every cause of action alleged therein, is barred, in whole or in
13 part, because Defendant took all reasonable steps to prevent any alleged discrimination, harassment,
14 and/or retaliation once Defendant was made aware of Plaintiff's complaints.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 **(Avoidable Consequences)**

17 The Complaint, and each and every cause of action alleged there in, is barred by the avoidable
18 consequences doctrine.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 **(Business Necessity)**

21 Any and all wrongful conduct alleged by Plaintiff was necessitated due to business necessity.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 **(Employer Lacked Knowledge)**

24 The Complaint, and each and every cause of action alleged therein, is barred, or any damages
25 reduced because Defendant lacked knowledge that Plaintiff was allegedly subject to discrimination,
26 harassment, and/or retaliation.

27 ///

28 ///

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(Estoppel)**

3 The Complaint, and each and every cause of action alleged therein, is barred by the doctrine
4 of estoppel.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 **(Excessive Fines)**

7 The Complaint, and each and every cause of action alleged therein, is barred in that any award
8 of restitution would violate the Excessive Fines and Due Process Clauses of the United States and
9 California Constitutions.

10 **NINTH AFFIRMATIVE DEFENSE**

11 **(Failure to Exhaust Administrative Remedies)**

12 The Complaint, and each and every cause of action alleged therein, is barred, or any damages
13 reduced by Plaintiff's failure to exhaust administrative remedies.

14 **TENTH AFFIRMATIVE DEFENSE**

15 **(Failure to Mitigate Damages)**

16 Plaintiff failed to take reasonable steps and make reasonable expenditures to reduce
17 Plaintiff's claims, damages, losses, if any, and that said failure to mitigate Plaintiff's damages bars
18 or reduces any claims, losses, or damages.

19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 **(Good Faith but Mistaken Belief)**

21 The Complaint, and each and every cause of action alleged therein, is barred as Defendant's
22 alleged actions were justified by its good faith but mistaken belief.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 **(No Authorization or Ratification)**

25 Any unlawful or wrongful acts, to the extent they exist, taken by Defendant's agents or
26 employees were outside the course and scope of their authority and such acts, if any, were not
27 authorized, ratified, or condoned by Defendant nor did Defendant know nor should have known of
28 such acts.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Discriminatory Intent-Legitimate Nondiscriminatory Reason)

The Complaint, and each and every cause of action alleged therein, is barred as there was no discriminatory intent as Defendant's alleged actions were based on a legitimate nondiscriminatory reason.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Penalty)

The Complaint, and each and every cause of action alleged therein, is barred in that Plaintiff is not entitled to any penalty, including but not limited to, penalties awarded under California Labor Code sections 98.6, 210, 226.3, 226.7, 558, 1102.5 and 1174.5. and IWC Order No. 7-2021, because, at all relevant times, Defendant did not willfully fail to comply with the compensation provisions of California law, but rather acted in good faith and had reasonable grounds for believing that it did not violate those provisions.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Punitive Damages Against Corporate Defendant)

Defendant is not liable to Plaintiff for punitive damages because neither Defendant nor any of its officers, directors, or managing agents committed any alleged oppressive, fraudulent, or malicious acts; authorized or ratified any such acts; had advance knowledge of the unfitness, if any, of the employee or employees, if any, who allegedly committed such acts; or employed any such employee or employees with a conscious disregard of the rights or safety of others, as required by California Civil Code section 3294(b).

SIXTEENTH AFFIRMATIVE DEFENSE

(No Punitive Damages)

Plaintiff's claim for exemplary or punitive damages is barred and invalid on its face and/or as applied to this Defendant pursuant to the First, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States and Article I of the Constitution of the State of California.

111

11

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 **(Not a Covered Employer)**

3 The Complaint, and each and every cause of action alleged therein, is barred as Defendant
4 was not a covered employer at the time the alleged wrongful conduct occurred.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 **(Not a Substantial Motivating Reason)**

7 The Complaint, and each and every cause of action alleged therein, is barred as Defendant's
8 alleged actions were not a substantial motivating reason for the alleged adverse employment action.

9 **NINETEENTH AFFIRMATIVE DEFENSE**

10 **(Same Decision Limits Remedies)**

11 The Complaint, and each and every cause of action alleged therein, is limited as Plaintiff
12 would have been terminated for non-discriminatory reasons based on legitimate business reasons.

13 **TWENTIETH AFFIRMATIVE DEFENSE**

14 **(Statute of Limitations)**

15 The Complaint, and each and every cause of action alleged therein, is barred by the applicable
16 statute of limitations, including, but not limited to, Government Code sections 12960 and 12965;
17 Code of Civil Procedure sections 335.1, 337, 338, 339, 340 and 343; and Business and Professions
18 Code section 17208.

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 **(Unclean Hands)**

21 The Complaint, and each and every cause of action alleged therein, is barred by the doctrine
22 of unclean hands.

23 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

24 **(Unconstitutionality of Penalties)**

25 The Complaint, and each and every cause of action alleged therein, is barred in that Plaintiff
26 is not entitled to recover any punitive or penal damages, such as those Plaintiff seeks under California
27 Labor Code sections 98.6, 210, 226.3, 226.7, 558, 1102.5 and 1174.5. and IWC Order No. 7-2021,
28 and any award of such penalties or damages would, in general or under the facts of Plaintiff's

1 particular claims, violate Defendant's constitutional rights under the provisions of the United States
2 and California Constitutions.

3 Defendant may have additional defenses that cannot be articulated due to Plaintiff's failure
4 to particularize Plaintiff's claims, due to the fact that Defendant does not have copies of certain
5 documents bearing on Plaintiff's claims and due to Plaintiff's failure to provide more specific
6 information concerning the nature of the damage claims and claims for certain costs which Plaintiff
7 alleges that Defendant may share some responsibility. Defendant therefore reserves the right to assert
8 additional defenses upon further particularization of Plaintiff's claims, upon examination of the
9 documents provided, upon discovery of further information concerning the alleged damage claims
10 and claims for costs, and upon the development of other pertinent information.

11

12

PRAYER FOR RELIEF

13

WHEREFORE, Defendant prays for judgment as follows:

14

1. That Plaintiff takes nothing by way of the Complaint;
2. That judgment be entered against Plaintiff and in favor of Defendant on all causes of
action;
3. That Defendant be awarded attorneys' fees and costs of suit incurred herein; and
4. That Defendant be awarded such other and further relief as the Court may deem just
and proper.

20

21

DATED: December 29, 2021

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

22

23

24

By:


James T. Conley
Jill L. Schubert

25

26

Attorneys for Defendant
WAL-MART ASSOCIATES, INC.

27

28

PROOF OF SERVICE

Doreena Gonzales v. Wal-Mart Associates, Inc.
Santa Clara County Superior Court Case No. 21CV391066

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of Sacramento in the office of a member of the bar of this court at whose direction the service was made. My business address is 500 Capitol Mall, Suite 2500, Sacramento, CA 95814. My email address is: noreen.witt@ogletree.com.

On December 29, 2021, I served the following document(s):

**DEFENDANT WAL-MART ASSOCIATES, INC.'S ANSWER
TO PLAINTIFF DOREENA GONZALES' COMPLAINT**

by placing (the original) (a true copy thereof) in a sealed envelope addressed as stated on the following party(ies):

Joseph M. Lovretovich
Eric M. Gruzen
Shahla Jalil-Valles
JML LAW
5855 Topanga Blvd., Suite 300
Woodland Hills, CA 91367
jml@jmllaw.com
egruzen@jmllaw.com
shahla@jmllaw.com

Attorneys for Plaintiff
DOREENA GONZALES

- BY MAIL:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - BY OVERNIGHT DELIVERY:** I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Ogletree, Deakins, Nash, Smoak & Stewart P.C., Sacramento, California. I am readily familiar with Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery.
 - BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses listed on the above service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
 - (State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on December 29, 2021, at Sacramento, California.

Nereen F. Witt

Noreen Witt